

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ANDY KUFFUOR-AFRIYIE,)	Case No.: 24-cv-01294-KAM-PK
)	
Plaintiff,)	
)	
v.)	
)	
RESURGENT CAPITAL SERVICES L.P. and)	
LVNV FUNDING, LLC,)	
)	
Defendants.)	

**DEFENDANTS’ ANSWER WITH AFFIRMATIVE DEFENSES TO PLAINTIFF’S
COMPLAINT**

Defendants, LVNV FUNDING, LLC (“LVNV”) and RESURGENT CAPITAL SERVICES L.P. (“Resurgent”) (together, “Defendants”), by their attorneys, J. Robbin Law PLLC, as and for an Answer to the Complaint (“Complaint”) filed by Plaintiff, ANDY KUFFUOR-AFRIYIE (“Plaintiff”), with Affirmative Defenses states, upon information and belief, as follows:

IN RESPONSE TO THE COMPLAINT

IN RESPONSE TO “I. INTRODUCTION”

1. Paragraph 1 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 1 of the Complaint and leave Plaintiff to his proofs.

2. Paragraph 2 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 2 of the Complaint and leave Plaintiff to his proofs.

3. Paragraph 3 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 3 of the Complaint and leave Plaintiff to his proofs.

4. Paragraph 4 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 4 of the Complaint and leave Plaintiff to his proofs.

IN RESPONSE TO “II. JURISDICTION AND VENUE”

5. Paragraph 5 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 5 of the Complaint and leave Plaintiff to his proofs.

6. Paragraph 6 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 6 of the Complaint and leave Plaintiff to his proofs.

IN RESPONSE TO “III. PRELIMINARY STATEMENT”

7. The Preliminary Statement is not enumerated. The Preliminary Statement of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in the Preliminary Statement of the Complaint and leave Plaintiff to his proofs.

IN RESPONSE TO “IV. PARTIES”

8. Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 7 of the Complaint and leave Plaintiff to his proofs.

9. Paragraph 8 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 8 of the Complaint and leave Plaintiff to his proofs.

10. Defendants deny the allegations set forth in Paragraph 9 of the Complaint and leave Plaintiff to his proofs.

11. Paragraph 10 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 10 of the Complaint and leave Plaintiff to his proofs.

12. Paragraph 11 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 11 of the Complaint and leave Plaintiff to his proofs.

13. Paragraph 12 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 12 of the Complaint and leave Plaintiff to his proofs.

14. Paragraph 13 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the

extent a response is required, Defendants deny the allegations set forth in Paragraph 13 of the Complaint and leave Plaintiff to his proofs.

15. Paragraph 14 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 14 of the Complaint and leave Plaintiff to his proofs.

16. Paragraph 15 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 15 of the Complaint and leave Plaintiff to his proofs.

17. Paragraph 16 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 16 of the Complaint and leave Plaintiff to his proofs.

18. Paragraph 17 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 17 of the Complaint and leave Plaintiff to his proofs.

19. Paragraph 18 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 18 of the Complaint and leave Plaintiff to his proofs.

20. Paragraph 19 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 19 of the Complaint and leave Plaintiff to his proofs.

21. Paragraph 20 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 20 of the Complaint and leave Plaintiff to his proofs.

22. Paragraph 21 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 21 of the Complaint and leave Plaintiff to his proofs.

23. Paragraph 22 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 22 of the Complaint and leave Plaintiff to his proofs.

24. Defendants deny the allegations set forth in Paragraph 23 of the Complaint and leave Plaintiff to his proofs.

25. Paragraph 24 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 24 of the Complaint and leave Plaintiff to his proofs.

26. Paragraph 25 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 25 of the Complaint and leave Plaintiff to his proofs.

27. Paragraph 26 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 26 of the Complaint and leave Plaintiff to his proofs.

28. Paragraph 27 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 27 of the Complaint and leave Plaintiff to his proofs.

29. Paragraph 28 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 28 of the Complaint and leave Plaintiff to his proofs.

30. Paragraph 29 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 29 of the Complaint and leave Plaintiff to his proofs.

31. Paragraph 30 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the

extent a response is required, Defendants deny the allegations set forth in Paragraph 30 of the Complaint and leave Plaintiff to his proofs.

IN RESPONSE TO “V. FACTS OF THE COMPLAINT”

32. Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 31 of the Complaint and leave Plaintiff to his proofs.

33. Defendants deny the allegations set forth in Paragraph 32 of the Complaint and leave Plaintiff to his proofs.

34. Defendants deny the allegations set forth in Paragraph 33 of the Complaint and leave Plaintiff to his proofs.

35. Defendants deny the allegations set forth in Paragraph 34 of the Complaint and leave Plaintiff to his proofs.

36. Defendants deny the allegations set forth in Paragraph 35 of the Complaint and leave Plaintiff to his proofs.

37. Defendants deny the allegations set forth in Paragraph 36 of the Complaint and leave Plaintiff to his proofs.

38. Defendants deny the allegations set forth in Paragraph 37 of the Complaint and leave Plaintiff to his proofs.

39. Defendants deny the allegations set forth in Paragraph 38 of the Complaint and leave Plaintiff to his proofs.

40. Defendants deny the allegations set forth in Paragraph 39 of the Complaint and leave Plaintiff to his proofs.

41. Defendants deny the allegations set forth in Paragraph 40 of the Complaint and leave Plaintiff to his proofs.

42. Defendants deny the allegations set forth in Paragraph 41 of the Complaint and leave Plaintiff to his proofs.

43. Defendants deny the allegations set forth in Paragraph 42 of the Complaint and leave Plaintiff to his proofs.

44. Defendants deny the allegations set forth in Paragraph 43 of the Complaint and leave Plaintiff to his proofs.

45. Defendants deny the allegations set forth in Paragraph 44 of the Complaint and leave Plaintiff to his proofs.

46. Defendants deny the allegations set forth in Paragraph 45 of the Complaint and leave Plaintiff to his proofs.

47. Defendants deny the allegations set forth in Paragraph 46 of the Complaint and leave Plaintiff to his proofs.

48. Defendants deny the allegations set forth in Paragraph 47 of the Complaint and leave Plaintiff to his proofs.

49. Paragraph 48 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 48 of the Complaint and leave Plaintiff to his proofs.

50. Paragraph 49 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 49 of the Complaint and leave Plaintiff to his proofs.

IN RESPONSE TO “VI. FIRST CLAIM FOR RELIEF
(Defendants LVNV FUNDING LLC and RESURGENT CAPITAL SERVICES L.P.)
15 U.S.C. § 1692c(a)(1)”

51. Defendants repeat and reiterate the foregoing allegations as if fully set forth herein.

52. Paragraph 50 of the Complaint repeats and re-alleges the allegations set forth in Complaint to which responses are not required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 50 of the Complaint and leave Plaintiff to his proofs.

53. Paragraph 51 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 51 of the Complaint and leave Plaintiff to his proofs.

54. Paragraph 52 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 52 of the Complaint and leave Plaintiff to his proofs.

55. Paragraph 53 of the Complaint contains legal conclusions to which a response is not required and Defendants respectfully refer all questions of law to the within Court. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 53 of the Complaint and leave Plaintiff to his proofs.

GENERAL DENIAL

Defendants interpose a general denial to the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

1. The Court lacks personal jurisdiction over Defendants.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

2. The Complaint fails to state a cause of action upon which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

3. Plaintiff's Complaint is barred, in whole, or in part, by his own intentional negligent or otherwise culpable wrongdoing.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

3. Plaintiff's claims have no basis, contain misstatements of law and fact, and fail to disclose material facts.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

5. Plaintiff's claims are barred by his unclean hands.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

6. Plaintiff has suffered no damages as a result of any of the actions of Defendants. To the extent that Plaintiff does have any damages, those damages are a result of an intervening cause specifically the negligence of Plaintiff, Plaintiff's alleged attorneys, or third parties that Defendants have no liability, authority or control.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

7. Defendants are entitled to a setoff. Plaintiff is indebted to Defendant on the account referenced in his Complaint. That account balance, and any associated interest, fees or costs - whether originally sought to be collected or not - should be set off against any recovery that Plaintiff might obtain in this action.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiff alleges only vague, technical, statutory violations of law. Plaintiff has not suffered any concrete injury, either tangible or intangible, nor any damages. Accordingly, Plaintiff

lacks Article III standing to sue and the Complaint must be dismissed. *See Spokeo Inc. v. Robins*, 136 S. Ct. 1540 (2016).

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

9. Plaintiff is not a consumer as defined by the FDCPA.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

10. Defendants are not debt collectors as defined by the FDCPA.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiff lacks standing to maintain the suit.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

12. Plaintiff's Complaint is barred by the statute of limitations.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

13. Plaintiff's Complaint is encompassed by the Cardholder Agreement and the Arbitration Agreement and, therefore, the Complaint is subject to Arbitration.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

14. Defendants are not presently able to determine all of the affirmative defenses which it is entitled to assert, and may later determine that there are additional affirmative defenses which are applicable in this case, including, but not limited to, those defense enumerated or contemplated by Rule 8(c) of the Federal Rules of Civil Procedure. Defendants reserve the right to supplement this Answer and to add any additional affirmative defenses to the Complaint.

WHEREFORE, Defendants request that this Court enter judgment in its favor and against Plaintiff, as follows:

- a) Awarding Defendants costs, attorney's fees and disbursements;

- b) Dismissing Plaintiff's Complaint in its entirety, with prejudice, on the merits, and at its cost; and
- c) Awarding Defendants any such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendants hereby request a trial by jury on all issues so triable.

Dated: March 18, 2024

Respectfully submitted,

/s/ Jacquelyn A. DiCicco

Jacquelyn A. DiCicco, Esq.

Jonathan M. Robbin, Esq.

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